

**SPECIAL MEETING  
BOARD OF MAYOR AND ALDERMEN  
(PUBLIC HEARING – STORM WATER ORDINANCE)**

**October 4, 2005**

**5:30 PM**

Mayor Baines called the meeting to order.

Mayor Baines called for the Pledge of Allegiance, this function being led by Alderman Shea.

A moment of silent prayer was observed.

The Clerk called the roll.

Present: Aldermen Roy, Gatsas (late), Guinta (late), Sysyn, Osborne, Porter,  
O’Neil (late), Lopez, Shea, DeVries (late), Garrity, Smith, Thibault and Forest

Mayor Baines advised that the purpose of the special meeting is to hear those wishing to speak in favor of or in opposition to a proposed ordinance amendment; that the Clerk will present the proposed ordinance amendment for discussion at which time those wishing to speak in favor will be heard, followed by those wishing to speak in opposition; that anyone wishing to speak must first step to the nearest microphone when recognized and recite his or her name and address in a clear, loud voice for the record, that each person will be given only one opportunity to speak; and any questions must be directed to the Chair.

The Clerk presented the proposed ordinance amendment:

“Amending the Code of Ordinances of the City of Manchester by adding a new Chapter 54: Storm Water to Title V: Public Works.”

Mayor Baines requested that Rick Cantu, Environmental Permits Coordinator, make a presentation.

Rick Cantu, Environmental Permits Coordinator, stated I am the Storm Water Coordinator and Environmental Permits Coordinator. I work with the Storm Water Program. I am going to go through a little presentation here. I will give you some background as to why we are doing this and then we will show you some photographs on what it will help abate down the road and then we can open it up to discussion. On March 10, 2003 the EPA had the Phase II Storm Water Program adopted. This was required of 45 communities in New Hampshire because of the density of population. Manchester submitted their program. This is a copy of

the program here, it is quite an extensive document, with the requirements that we had to accomplish as part of this five-year program. The EPA received the program in late July and then on August 5 they acknowledged receipt of the program and we became officially that NH number. That is our program number. The program has been accepted by the EPA. The EPA expected the adoption of six minimum controls. Those were public education, public participation, illicit discharge detection and elimination, construction site runoff controls, post-construction storm water management and pollution prevention and housekeeping for municipal operations. On your desks I have left some of these. It breaks down everything we had to do. The one that is highlighted in yellow...this is what we are doing now, the ordinance. As you can see it is quite extensive what we had to do as part of this program and it is ongoing. It is not completed yet. Every year we submit a program to the EPA, a report. That sub package that you is #3, the illicit discharges that requires the development of a storm water ordinance. We developed this draft as was required by July 2005. That was completed and the final adoption has to be by July 30, 2006. The ordinance review went through several of the Phase I communities. The Phase I Program is the same as the Phase II Program. The only thing is that it required cities of 100,000 or more in 1990 to adopt this program. Manchester at that time had 96,000 or 97,000 so we fell under that threshold and we didn't have to do that but now we are in Phase II, which is the same as Phase I. So instead of starting from scratch we went through all of the Phase I communities and looked at their ordinances and picked the stuff that was appropriate for Manchester. We looked at the EPA model and then we looked at some of the smaller community's storm water ordinances. That copulation of ordinances we used to develop our draft ordinance that we are presenting here today. We met with the Highway Department's engineering and EPD staff to do internal review of the ordinance and then we met with the Planning Board in the fall of 2003. We brought forth the idea of this dovetailing with their planning and how it was going to work and the earliest draft ordinance, at that time, was quite a large document. We incorporated all of the suggestions from the input. A lot of the attorneys at various seminars and EPA suggested that we do a broad ordinance and focus on the rules and regulations. The rules and regulations are ongoing and growing where the ordinance is kind of locked in place for a period of time and the staff felt that this approach was sound. So we reduced the ordinance to reflect that intent. You have a 10 or 12 page document and then the

rules and regulations, which were the original ordinance were moved over and they are much broader in detail and scope. The two documents were sent out again for internal review and then finalized. The ordinance has 13 sections. Just quickly they are purpose, definitions, administration, prohibited discharges, permit procedures and requirements, general permit provisions, eligibility, waivers, design and management standards, industrial discharges, access and inspections, notification of spills and discharges and violations enforcement and penalties. An example of the ordinance section would be waivers. This is word for word what is being proposed in the ordinance. As you can see it is about a paragraph long. When you go to the rule and regulation that reflects that, you will see under general that is the part of the ordinance and then that is where we put in the conditions for the waiver. Those could change. The EPA could change those. We may find there is something we missed as this program develops. This is fairly new. That gives us the opportunity to work with these and change them as needed. It goes through the different things that are required to get a waiver. Before we go to this I wanted to show some of the things that we see outside every day. This will give you an idea of what we are looking at. These are some of the best management standards. You can see silt fence. If we didn't have this stuff up a lot of the dirt would wash right into the streams and brooks and bogs and things like that. Here you can see it is just an open net that could have potential problems. Here is some more stuff where they abated it. We had some issue with things running in here and asked them to abate that further. Down the side of the street you can see if the construction site is not properly taken care of the water runs off and erodes neighbor's properties. This is dirt that runs down to a local catch basin from a construction site that didn't have proper controls. Here they were doing the project on the I-93 bridge widening and didn't have proper controls and a big ravine washed a lot of dirt out into the street. Here we have a silt fence that failed. It had hay bales but nobody had looked after and they hadn't done the inspections after it rained and a lot of the silt had gone into the Cohas Brook. These are local projects where the upstream area...this was nicely laid and all of the rip wrap and everything was tight. They moved upstream and they didn't have the protection so it moved all of the dirt down so all of the work that was done came to naught. That kind of shows you down lower how that mud travels. Here is another small detention pond on a site. If you are not controlling upstream here you can see that the dirt and sediment starts to move into the pond so the pond becomes useless. Here is

a site where they didn't finish their looming and seeding and with the next rain storm a lot of this stuff would wash off down into the brook. So these are the things that this ordinance will give us the local control to cite the developers and get them working quicker to prevent this from happening. Right now we do inspections but we don't have the authority locally. It is EPA mandated and if we were to call the EPA for them to get out here it could take two, three, four or five months and by that time the project is done and closed and people are living there. That is what the ordinance is here for and I will answer questions if anyone has them.

Alderman Lopez stated I just want to make sure that I am following you correctly here. Ordinances from Page 2 until 11 are what you are speaking of. You are amending the Code of Ordinances by adding a new Chapter 54 Storm Water but when you talk about Storm Water Rules & Regulations, that is already in place or is that what you want to put in place in addition to the ordinance?

Mr. Cantu responded no those are not in place. The ordinance will give us the ability, if you look under administration it will give the Public Works Director the ability to adopt the rules and regulations.

Alderman Lopez asked but if we are looking at the ordinances and of course this is a public hearing here and that is what we are dealing with. We are not dealing with the Storm Water Rules & Regulations is that correct?

Mr. Cantu answered yes that is correct.

Alderman Lopez stated those are something that probably later on could be enacted into an ordinance correct.

Mr. Cantu responded they could but I think you would want to keep them as rules and regulations because they will evolve and change.

Alderman Lopez asked but we are not approving the rules and regulations.

Mr. Cantu answered right.

Alderman Lopez stated I just want to make sure that that is clear in my mind.

Kevin Sheppard, Deputy Public Works Director, stated Section 54.03 under Administration allows the Director of Public Works to institute the rules and regulations per this ordinance. Our plan was to get the ordinance passed, review the rules and regulations and implement them under the authority of the Public Works Director.

Alderman Lopez asked to implement the rules and regulations. But that is a policy isn't it? That is not an ordinance. We are only dealing with ordinances.

Mr. Sheppard answered correct. They are two different things. The ordinance and then the rules and regulations. Tonight we are acting only on the ordinance.

Alderman Shea asked, Kevin, who is going to enforce these particular rules and regulations or ordinances as it were and how are they going to do it.

Mr. Sheppard answered right now we have inspection staff as part of our staff at the Highway Department who go out to construction sites looking at the sewers, the roads and the improvements. This will be part of their work also. There will be a checklist to take a look at storm water prevention measures on the sites. Rick Cantu makes occasional site visits to look at these measures so there are people in place.

Alderman Shea stated let's assume that some of these regulations are not properly followed. I am reading through this. There is upwards of a \$10,000 fine. I realize that but is there a process that is going to be used in order to educate or to instruct or to help out? I mean you are not going to go to a particular site obviously but have you done any of that or is that going to be formulated or are we talking about something to be developed?

Mr. Sheppard responded Rick can probably expand on that a little bit further but we have worked with existing sites. We are not looking to go out there and start fining people. We want to educate people. Rick actually has information on the City's website about this. We are trying to get information out to the engineers and contractors out there to let them know what is going on. I spoke to Rick a little bit earlier and on the first site visit if there is an issue we are going to talk to the contractor and get it fixed. If we go back and it is not fixed maybe...Rick can maybe go through because we have been through this.

Mr. Cantu stated I actually do site inspections now. I fill out a report and if there is something missing or that needs to be worked on I pass it on to the contractor. Right now they comply out of being congenial but we don't have any enforcement powers. They really don't have to comply with our request. I would say that 90% to 95% work with us. There are always the few that say we don't need to listen to you. So this gives us the enforcement power on a local level so it doesn't get way out of hand.

Alderman Shea responded maybe I am just separating this and if I am you can stop me but there are a lot of instances in different areas of the City where people, and this may not concern this at all, are underneath their car changing their oil and doing things of that nature. Does this impact...I know it impacts storm water but is this connected as well to it? Is this going to be enforced as well? This is a problem because there are a lot of people in different areas of the City that are working on their own cars that are draining the oil and the oil is going down into the sewer and so forth. I have had constituents calling me about that particular problem. Is this part and parcel of that as well or is this separate?

Mr. Cantu replied when we get calls we actually try and address that through the industrial pre-treatment program but if they are small private residences and not a commercial industry or anything like that it is in the rules and regulations of the prohibited discharges. There is a whole list that goes from swimming pools to car waste to pesticides. It is pretty much all covered.

Alderman Thibault asked, Kevin, what we are talking about here...if a contractor is going out to build a house he is going to have to go see you people for a permit to do this type of work over there or is there any permit available presently for this type of thing.

Mr. Cantu stated currently this is programmed for anybody who disturbs an acre or more of land. If somebody is disturbing two acres, let's say six houses they are required right now to file an NOI, which is a notice of intent to EPA. They developed the Storm Water Pollution Prevention Plan.

Alderman Thibault asked they have to do that with the City.

Mr. Cantu answered no with the EPA but we have no authority to enforce that. All we are doing is dovetailing that program at the requirement of the EPA to adopt this so there is some local control. If there is an issue what they will do when they submit their NOI with the EPA, we will get a copy. Anything less than one acre will not be covered under this program unless it abuts a stream or a sensitive area.

Alderman Smith asked, Kevin, why do we allow developers to build a detention pond. I think is a big factor in a lot of developments today. You have stagnant water that doesn't move and stuff like that. What is the purpose of allowing them to have a detention pond?

Mr. Sheppard answered we are looking to keep the pre-run off, the same as the post run off, from sites so there is no impact down stream or to abutters to properties. There are detention ponds in subdivisions and a lot of times they are not City owned or our responsibility. Typically it is an easement and the City has flow-through easement through that for the City. Typically it is the homeowners of that association that is required to maintain that. A detention pond by design shouldn't be holding water. It should just be retaining water for a period of time and letting it out. At times they aren't maintained by these private organizations and that is something that Rick will also be following up on and taking a look at these different detention ponds.

Mayor Baines called for those wishing to speak in favor.

There were none.

Mayor Baines called for those wishing to speak in opposition.

Andre St. Laurent, Goffstown, NH stated:

First and foremost I am all in favor of the EPA and keeping debris away from streams and wetlands and so on and so forth but we are already doing this on a federal level. For years we have been doing that. What I am seeing and I have read this because Bob asked me to read this but we see a lot of duplication of effort. For instance, if you go to Section 3. Permit Procedure and Requirement it says that no land owner or land operator shall begin any site work on any building, grading, or other land development or any land disturbing activity without first submitting the NOI, which we are doing, to EPA Region I. We are already doing this. The next sentence says the owner must also have received an acknowledgement and have an approved Storm Water Pollution Plan and meet the requirements of the ordinance and the rules and regulations. I see that as a duplication of effort. We are already doing that. I would rather give you people or the Board or whoever our tracking number from the federal government and then you can go in the computer and find us and know that we are doing this versus duplicating efforts. Now it means that I am going to have to submit to the federal government and they are very easy because I go on the computer and within seven days I have a permit. With this ordinance it takes 30 days to get anything from the Board. That is where we are duplicating efforts. That is where if there were something we could reword it would help us. Another place is they want a copy of the NOI and the approved SWPP. Right now on the federal level I handle that. We have a Storm Water Pollution Plan for each site. We have a plan right on site and we have a master plan at the office. If EPA or anyone wants to come and see the site it is there and it is available. Now according to this they want us to send a copy to you people and then you people will approve the SWPP for the related project before beginning any site clearing or construction.

Sometimes it is not feasible to do that. Another part also that I have a problem with because any modification or update of the SWPP or the Storm Water Pollution Prevention Plan shall be prepared, signed and sealed by a registered professional engineer. I am not a professional engineer but I have been doing that for years in manufacturing and in construction for the last couple of years. I don't know why we need a registered engineer. I think maybe we could rewrite that. If I am capable of writing a Storm Water Pollution Plan I should be able to modify it. I have a problem with that. I guess it is all in the writing. I would be willing to work with Rick Cantu, whom I have known for years, to rewrite some of that stuff and make it helpful because it looks like it could be done easier. Again, it says within 30 days of receiving an application the Planning Department shall provide one of the following: approval of the permit application or denial. Again, we have been doing that for years and all of our plans have never had to be approved but we have had a visit from EPA on some of our sites and if they see we are doing something wrong, I think this could also be found



through the website. Record keeping for three years. I have no problem with that. We could probably do that because we don't have that many sites but these are the things. I have no problem with, again, EPA and keeping our streams and our wetlands free of debris from general contractors but it is a duplication of effort and I will probably have to hire another guy to keep up with this. We are doing it on a federal level and I think that is sufficient.

Bob Lamontagne, Bedford, NH stated:

I think everything Andre said is true. He is certified to write SWPP's. He has been certified by the EPA and that draft says you have to be a PE. I don't think it is necessary. Another thing is these plans are constantly changing. It sounds like you guys don't want everybody to get the wrong idea that you go to an engineer who develops a plan and you follow it. This plan is constantly changing. Every day a stockpile gets moved or a building gets built or something gets finished up. It is not really practical to get a PE to change the plan. A lot of times the supers on the job have the authority to change the plan. The other thing is if a project gets approved by the Planning Board the SWPP's are always filed by the contractor build the job. Sometimes you don't know who the contractor is when the project gets approved so it is kind of hard to do the SWPP not knowing how the guy is going to build the job. There are a few technicalities that if we could work with your people I think they could be worked out. I think the fee structure...we don't know what that is. There are provisions in there for fees. I can see that going through the roof maybe or a way for the City to collect big amounts of money from developers. I think that is about it.

Mayor Baines advised that all wishing to speak having been heard, the testimony presented will be taken under advisement and considered by the Board of Mayor and Aldermen.

This being a special meeting of the Board, no further business was presented and on motion of Alderman Smith, duly seconded by Alderman Osborne it was voted to adjourn.

A True Record. Attest.

City Clerk